31-1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1103.

THE UNITED STATES, APPELLANT,

vs.

CARRIE JONES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED SEPTEMBER 15, 1888.

accession 25888

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1103.

THE UNITED STATES, APPELLANT,

vs.

CARRIE JONES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

INDEX.

	Original.	Print.
Proof of service of citation	1	1
Citation	2	1
Caption	3	1
Petition in equity	4	1
Proof of service of petition	8	3
Admission of service of petition	10	4
Demurrer to petition	12	4
Order overruling demurrer	15	5
Opinion of the court	17	5
Amended petition	20	11
Demurrer to amended petition	25	13
Final decree	28	14
Clerk's certificate	29	15

1 DISTRICT OF OREGON, *ss:*

I certify that on the 30th day of August, 1888, at Portland, Oregon, Multnomah County, in said district, I duly served the within citation on appeal upon the therein named Carrie Jones, by delivering to her, personally, a true copy of said citation on appeal duly certified to by me as U. S. marshal.

JOHN MYERS,
United States Marshal.
By W. W. ROBERTS,
Deputy.

2 UNITED STATES OF AMERICA,
District of Oregon, ss:

To Carrie Jones, plaintiff in the case of Carrie Jones v. The United States, defendant.

Whereas the United States, defendant above named, has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon in your favor, and has given the security required by law, you are therefore hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. eighteen hundred and eighty-eight, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this August 30th, 1888.

MATTHEW P. DEADY,
U. S. District Judge.

(Indorsed:) No. 1449. U. S. circuit court, district of Oregon. Carrie Jones vs. The United States. Citation on appeal. Filed Aug. 30, 1888. R. H. Lamson, clerk. By R. B. Lamson, deputy clerk.

3 In the circuit court of the United States for the District of Oregon.
April term, 1888.

Be it remembered, that on the 30th day of April, 1888, there was duly filed in the circuit court of the United States for the district of Oregon a petition in equity, in words and figures as follows, to wit:

4 In the circuit court of the United States for the district of Oregon.

CARRIE JONES, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT.

Petition.

To the judges of the circuit court of the United States for the district of Oregon.

Your petitioner in this her petition respectfully shows that her full name is Carrie Jones, and that she resides in Multnomah County, Oregon.

That prior to June 21st, 1883, the southeast quarter of section 30 in township No. 7, north of range No. 3 west, in Columbia County, Oregon, was surveyed public land of the United States, and subject to entry and purchase under an act of Congress of June 3, 1878, and was not fit for agriculture, but was chiefly valuable for the timber thereon.

That on said 21st day of June, 1883, one John R. Frierson, having theretofore complied with all the requirements of said act, and of the regulations governing the manner of acquiring land under said act so as to entitle him to pay for the same and claim a patent from the United States therefor, did on said day, at the United States land office at Oregon City, Oregon, purchase said land from the United States, and did then and there pay to the receiver of land office the sum of $400, that sum being the purchase price for said above-described land at the price of $2.50 per acre.

That said receiver, upon the payment of said sum as aforesaid, then and there made, executed, and delivered to said John R. Frierson a certificate or receipt therefor, of which the following is a copy, viz:

5 "No. 2009] RECEIVER'S OFFICE
At Oregon City, Oregon, June 21, 1883.

Received of John R. Frierson, of Columbia County, Oregon, the sum of ($400.00) four hundred dollars and cents, being in full for the S. E. ¼ of section No. 30, in township No. 7, N. of range No. 3 west, containing 160 acres and hundredths, at $2.50.

$400.00. Fee, $10.00. Proof, $1.00.

J. G. PILLSBURY,
Receiver."

Your petitioner fu'ther shoes that on the 26th day of June, 1885, said Frierson, for a valuable consideration, sold, assigned, and transferred said certificate and receipt, and all his right, title, and interest therein and to said property to your petitioner, and that afterwards, on July 26th, 1887, in consideration of said sale, said Frierson made, executed, and delivered to your petitioner a good and sufficient deed of warranty, said deed granting and conveying said property to your petitioner.

Your petitioner fu'ther shows that said property exceedes in value the sum of $1,000.00, and does not exceed in value the sum of $10,000.00.

That ever since the payment to said receiver of said sum of $400.00 as aforesaid, he and the defendant have kept and retained the same, and now retain and are in possession of the said money.

That no patent has ever issued pursuant to said sale to said Frierson, granting or conveying said property from the United States, but your petitioner stetes the truth to be that the defendant, and its servants, whose duty it is to execute said patent, although often requested to do so, neglect and refuse to do so, and deny the right of your petitioner to have
6 said patent executed or to any interest in said property.

Your petitioner fu'ther shows in consequence of the refusal and neglect of the defendant and its servants to execute, issue, and deliver said patent, the title of your petitioner to said property is clouded and distrusted, and the full and perfect enjoyment of said property thereby prevented, and

your petitioner is, in consequence thereof, deprived of full and advantageous power of alienation.

Your petitioner, to the end that her rights as purchaser of said property may be protected and that she may be possessed of her full title thereto, prays of this honorable court a decree—

1st. That the defendant execute, issue, and deliver, or cause to be executed, issued, and delivered in accordance with law, a patent granting and conveying said above-described property to said John R. Frierson, and that all the interest and estate of said Frierson under and by virtue of said sale and said patent so issued pursuant thereto enure to your petitioner, and that she be decreed to be the absolute owner of said property according to the terms of and pursuant to said sale, assignment, and conveyance from said Frierson to your petitioner.

2d. That your petitioner recover her costs, charges, and disbursements herein expended and to be expended.

(Signed.) W. SCOTT BEEBE,
Attorney for Plaintiff.

STATE OF OREGON,
Multnomah County:

I, Carrie Jones, being first duly sworn, say that I have heard read the foregoing petition, and that I know the contents thereof. That I am the petitioner therein named, and that said petition and the facts therein stated are true as I verily believe.

(Signed.) CARRIE JONES.

Subscribed and sworn to before me this 28th day of April, 1888.
(Signed.)
[SEAL.] W. SCOTT BEEBE, *Notary Public for Oregon.*

(Endorsed.) Filed April 30, 1888. R. H. Lamson, clerk. By R. B. Lamson, deputy.

7 And afterwards, to wit, on the 30th day of April, 1888, there was duly filed in said court a proof of service in words and figures as follows, to wit:

8 In the circuit court of the United States for the district of Oregon.

CARRIE JONES, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT.

STATE OF OREGON,
Multnomah County, ss:

I, W. Scott Beebe, being first duly sworn, say that I am attorney for the plaintiff in the above-entitled action; that on Monday, April 30th, 1888, I served a copy of the plaintiff's petition in this action upon A. H. Garland, Attorney-General of the United States, by depositing a copy of

said petition in the post-office at Portland, Oregon, in a sealed envelope, postage paid, and addressed as follows, viz:

"Hon. A. H. GARLAND,
"*Attorney-General of the United States,*
"*Washington, D. C.*"

And I further state that I registered said letter at said time and place and paid the postage and fees thereof.

W. SCOTT BEEBE.

Subscribed and sworn to before me this the 30th day of April, 1888.

R. H. LAMSON,
Clerk.

(Endorsed:) Filed April 30, 1888. R. H. Lamson, clerk.

9 And afterwards, to wit, on the 1st day of May, 1888, there was duly filed in said court a proof of service in words and figures as follows, to wit:

10 In the circuit court of the United States for the district of Oregon.

CARRIE JONES, PLAINTIFF,
vs.
THE UNITED STATES, DEF'T.

I hereby admit due personal service on me of a copy of petition filed in the above-entitled cause at Portland, Oregon, this 1st day of May, 1888.

LEWIS L. MCARTHUR,
U. S. District Attorney for Oregon.

(Endorsed:) Filed May 1, 1888. R. H. Lamson, clerk.

11 And afterwards, to-wit, on the 4th day of May, 1888, there was duly filed in said court a demurrer to petition in words and figures as follows, to-wit:

12 In the circuit court of the United States for the district of Oregon.

CARRIE JONES
vs.
THE UNITED STATES. } No. 1449.

Demurrer of the United States, defendant, to the petition of Carrie Jones, the above named petitioner:

This defendant by protestation not confessing all or any of the matters and things in petitioner's petition contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to said petition and for cause of demurrer showeth:

That said petition doth not show any facts which entitle the petitioner to maintain said petition or to have the same considered by the court.

That the matters and things in the said petition set forth do not show that the plaintiff has any claim at law, equity, or admiralty against the defendant.

That the petition doth not show that this court hath any juris-
13 diction of the matters and things therein set forth.

That the matters and things in said petition set forth do not show that there is any cloud upon the complainant's alleged title which can be removed by a decree of this court.

Wherefore, and for divers other good causes of demurrer appearing in said petition, the defendant doth demur thereto and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said petition and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

LEWIS L. MCARTHUR,
U. S. Attorney.

DISTRICT OF OREGON, *ss:*

I, Lewis L. McArthur, U. S. Att'y do hereby certify that in my judgment the foregoing demurer is well grounded in law.

LEWIS L. MCARTHUR.

(Endorsed:) Filed May 4, 1888. R. H. Lamson, clerk.

14 And afterwards, to wit, on Monday, the 16th day of July, 1888, the same being the 53d judicial day of the regular April term of said court; present, the honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in said case, to-wit:

15 In the circuit court of the United States for the district of Oregon.

CARRIE JONES
vs. } No. 1449.
THE UNITED STATES.

JULY 16, 1888.

This cause was heard upon the demurrer to the petition filed herein, and was argued by Mr. W. Scott Beebe and Mr. James K. Kelly, of counsel for the plaintiff, and by Mr. Lewis L. McAuthur, United States attorney; on consideration whereof it is ordered and adjudged that said demurrer be, and the same is hereby, overruled.

(Signed) DEADY, *J.*

(Endorsed:) Filed July 16, 1888. R. H. Lamson, clerk, by R. B. Lamson, deputy.

16 And afterwards, to wit, on the 16th day of July, 1888, there was duly filed in said court an opinion by the court in words and figures as follows, to wit:

17 United States circuit court, district of Oregon. Monday, July 16, 1888.

CARRIE JONES
v. } No. 1449. Suit to compel the issue of patent.
THE UNITED STATES.

(1) Claim to a patent for land. The word "claim" as used in the act of 1887 (24 Stat., 505), giving this court jurisdiction to hear and determine certain claims against the United States, includes a claim by a purchaser or his assignee of timber land under the act of 1878 (20 Stat., 89) to have a patent issue for the same.

DEADY, *J.*:

This suit is brought under the act of March 3, 1887 (24 Stat., 505), entitled "An act to provide for the bringing of suits against the Government of the United States," to compel the issue of a patent to the southeast quarter of section 30, in township 7 north, of range 3 west of the Wallamet meridian.

It is alleged in the petition that the petitioner resides in Multnomah County, Oregon, and that the land in question is situated in Columbia County, and is of a value not less than $1,000 nor more than $10,000; that prior to June 21, 1883, said land was surveyed and subject to entry and purchase under the act of June 3, 1878, for the sale of timber lands in Oregon and other Pacific States (20 Stat., 89), "and was not fit for agriculture, but was chiefly valuable for the timber thereon;" that on said June 21 one John R. Frierson, having complied with the requirements of said act and the regulations concerning the acquisition of land thereunder, "so as to entitle himself to pay for the same and claim a patent therefor from the United States," did on said day, at the United States land office in Oregon City, Oregon, purchase said land from the defendant, and did then and there pay to the receiver of said land office the price thereof, to wit, the sum of $400, or $2.50 per acre, and that the receiver gave said Frierson "a certificate or receipt" for said money as "being in full" for said land.

That on June 26, 1883, said Frierson for a valuable consideration sold, assigned, and transferred said certificate and receipt, and all his right, title, and interest therein and to said property," to the petitioner, and on the same day, in consideration of such sale, said Frierson executed and delivered to the petitioner a good and sufficient deed, with warranty, of said land; that the defendant has kept and retained said $400, and its servants, whose duty it is to execute and deliver the patent for said land, refuse to do so, and deny the right of the petitioner to have the same or to any interest in said land, whereby her title thereto is clouded and the full enjoyment of the property prevented.

The prayer of the petition is that the court will decree that a patent for said land issue to said Frierson, and that all his interest and estate therein by virtue of said sale and patent enure to the petitioner, according to the conveyance to her by said Frierson.

Due service of the petition was made on the district attorney and the Attorney-General, as provided in § 6 of the act of 1887, and thereupon the district attorney appeared for the defendant and demurred to the petition.

Several causes of demurrer are stated, but they are all in effect a denial that the case or the claim of the petitioner is within the purview of the act of 1887; and on the argument of the same the point was made and relied on that the "claim" against the United States, of which the act gives this court "jurisdiction to hear and determine," is one for money only.

And, first, the act of 1878 (§ 1) provides that the surveyed public lands in Oregon and other Pacific States, with certain exceptions not necessary now to mention, "valuable chiefly for timber, but not fit for cultivation, * * * may be sold to citizens of the United States * * * in quantities not exceeding 160 acres to any one person * * * at the

minimum price of $2.50 per acre;" that (§ 2) any person desiring to avail himself of the provisions of the act "shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase," and setting forth therein the other particulars concerning the character of the land and the purpose of the applicant in acquiring the same, necessary to bring the application within the statute, "which statement must be verified by the oath of the applicant." If such oath is false the affiant is liable to punishment for perjury, "and shall forfeit the money which he may have paid for said lands and all right and title to the same, and any grant or conveyance which he may have made, except in the hands of a bona fide purchaser, shall be null and void."

The act further provides (§ 3) that notice of the application shall be given for sixty days, when, if no adverse claim is filed, "the applicant shall furnish to the register of the land office satisfactory evidence" of the publication of the notice and the character and condition of the land, when, on payment of "the purchase money," he "may be permitted to enter" the same; "and on the transmission to the General Land Office of the papers and the testimony in the case a patent shall issue thereon."

But any person having a valid claim to any portion of such land "may object, in writing, to the issuance of a patent" thereto, which objection shall be heard and "determined by the officers of the land office, subject to appeal as in other land cases."

An applicant for land under this act becomes the purchaser thereof when he makes the prescribed proof to the satisfaction of the register and pays the prescribed price therefor. When the certificate of purchase is issued to the applicant the land described therein becomes his property. The bare legal title is all that remains in the vendor in trust for the vendee; and if it was the case of a private person a court of equity would compel him to perform his part of the contract by executing and delivering to the vendee the proper conveyance thereof.

If it is claimed that the certificate was fraudulently or illegally obtained the land department can not arbitrarily, or at all, cancel the same or set it aside. The certificate and the right of the purchaser thereunder is property, of which he can not be deprived without due process of law. And mere fiat law, by whomsoever pronounced, can have no such effect. Redress must be had in the courts where such matters are properly cognizable, and where they may be heard and determined according to the law of the land—the law applicable to the rights and obligations of private persons under like circumstances. (Smith v. Ewing, 11 Saw., 56.)

On the facts stated in the complaint Frierson was the lawful purchaser of the premises from the United States, and is entitled to a patent therefor, and the petitioner has succeeded to all his rights.

This being so, does the act of 1887, permitting the United States to be sued in this court on "all claims founded" as therein specified, include this claim or case?

The act provides (§ 1) that "the Court of Claims shall have jurisdiction to hear and determine * * * all claims founded on the Constitution of the United States or any law of Congress, except for pensions,

or upon any regulation of an executive department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable," with certain exceptions not material here to state. The act (§ 2) also gives the district and circuit courts of the United States concurrent jurisdiction with the Court of Claims in all such cases; provided, in case of the former, "the amount of the claim" does not exceed $1,000, and in case of the latter exceeds that sum and does not exceed $10,000.

A suit under the act (§ 5) is commenced by filing a verified petition with the clerk of the proper court in the district where the plaintiff resides. "The petition must set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed or the damages sought to be recovered, and praying the court for a judgment or decree upon the facts and law," and a copy of the petition must be served on the district attorney and another mailed to the Attorney-General of the United States.

This act should not be strictly construed. It is both beneficent and remedial in its character. In the progress of society from barbarism to civilization the redress of wrongs and the enforcement of rights by the prescribed methods and measures of the law is an important element and in the end a prime result. Then the administration of justice not only includes redress against private persons, but by the individual against society—the one against the many. Then, under some proper prudential restraints as to costs and the like, every citizen of the Re-
18 public who has a claim against the Government, instead of being compelled to seek relief from year to year from a distant, indifferent, overgrown and overburdened Congress, or Department, will be allowed to seek redress in the ordinary courts of the country in the district where he resides.

The old superstition, born of the tribal and feudal systems, that regarded the right of the subject to call the chief or sovereign to answer and do him right in a court of justice as incompatible with the dignity of the ruler, has no proper place in either the form or idea of our Government, and should not be allowed to come between the citizen and his right to redress against the same. See Mr. Justice Miller in U. S. v. Lee, 106 U. S., 204.

The organization of the Court of Claims at Washington, 1885 (10 Stat., 612), was a signal movement in this direction.

By this act that court was given jurisdiction to "hear and determine all claims founded upon any law of Congress, or upon any regulation of an executive Department, or upon any contract, express or implied, with the Government of the United States."

Thereafter, from time to time, jurisdiction was given the court over particular cases; but the general jurisdiction remained unchanged until the passage of the act of 1887, which materially enlarges it.

The establishment of a court of claims at Washington, although a long

step in advance in the administration of justice between the United States and the people thereof, fell far short of what was necessary to that end. In Bonner v. United States, 9 Wall., 156, the Supreme Court held that the Court of Claims had no jurisdiction of a suit founded on equitable considerations merely.

This is remedied by the act of 1887, which in effect authorized a suit to be maintained against the United States either at law, in equity, or admiralty.

But the great advance in the act of 1887 is the provision allowing the person entitled to sue thereunder, in case his claim does not exceed $10,000 in value, to bring his suit in the national court for the district in which he resides.

In a country covering so large an area as the United States, in the great majority of cases it amounts to a denial of justice to require a suitor to bring his suit in a court so far removed from his residence and resources as the capital of the nation. In the court of his locality he can conduct his case with much less expense, with the advice and aid of attorneys of the vicinage, who he knows and trusts and who appreciate him and his cause, and in a tribunal imbued with the local knowledge, often so essential to a correct understanding and determination of a legal controversy.

Considering, for these reasons, that the act conferring jurisdiction on this court to hear and determine "all claims * * * founded on any contract * * * with the Government of the United States" is a highly remedial and beneficent one in its general purpose and scope, I proceed to consider whether it includes such a "claim" or cause of suit against the United States as the petitioner is shown to have.

On behalf of the defendant it is insisted that the word claim, as used in this act, means a money demand and no other—a claim on which a judgment or decree can be given for money or damages payable in money.

It may be admitted that the term is more often used in this sense than any other, simply because the great majority of claims which arise out of the intercourse and business of the country are in fact pecuniary ones. But the general and natural sense of the term is not thus limited. One may have a "claim" upon or against another for a chattel or land, as well as money or damages.

In Stowel v. Lord Zouch (Plowden, 359), a claim is defined as "a challenge by a man of the propriety or ownership of a thing which he has not in possession, but which is wrongfully detained from him." And this definition is adopted by Bouvier. Verbum, Claim.

In Prigg v. Pennsylvania (16 Pet., 615), the term is defined thus: "It is, in a just and judicial sense, a demand of some matter, as of right, made by one person on another to do or forbear to do some act or thing as a matter of duty."

Worcester defines it as follows: "A demand as of right. A challenge of ownership. To lay claim to anything."

In none of these definitions is the meaning of the word limited to mere money demands. And any of them is broad enough to include any demand or right which may be the subject of legal or equitable cognizance in a court of justice. As was said by the Supreme Court in Prigg v. Pennsylvania, supra, it includes a demand made of right by one person on an-

other to do some act as a matter of duty. And that is this case exactly. The petitioner, as a matter of right, demands that the defendant, as a matter of duty or legal obligation, comply with its contract under the law under which this land was sold to her assignor, Frierson, and issue a patent for the same.

This is her claim against the United States. It arises on a contract with the Government thereof—the contract of sale of June 21, 1883—and in its nature is enforceable by a suit in equity in this court for a specific performance of the same. And this brings the petitioner within the act of 1887, which gives her the right to sue the United States on any claim arising on contract by a suit in equity, as "if the United States were suable"—which must mean, as if the United States was a private person.

But section 5 of the act shows affirmatively that the right of action or suit given by it is not confined to money claims or demands, but includes "any other thing claimed." While I am not prepared to say that a claim or right to have a patent issue to a tract of land is a claim or right to a "thing" because the same is not in esse, but only in posse, yet the use of the word in this connection plainly shows that Congress did not understand that it was legislating about claims for money only, and that a party having a claim founded upon any law of Congress or contract with the Government of the United States to a chattel or land in the possession of the Government thereof is within the statute.

In my judgment, any person who has a claim against the United States, founded on a contract with the Government thereof, on which an action at law or a suit in equity or admiralty might be maintained against a private person, is within the purview of the statute, and may proceed thereunder for the relief to which he is entitled, be it money, damages, possession of chattels or land, or a specific performance of a contract in relation thereto.

This, so far as I know, is the first case under this statute, and as it is understood that there are a number of like cases in this district, it is desirable that the construction of the statute should be settled by the Supreme Court at an early day.

It is not likely that patents are withheld by the Land Department in these cases without some cause which is thought sufficient to overcome the apparent right of the purchaser. But the right of the purchaser can not be disposed of in this one-sided, arbitrary way. If the United States will not bring a suit to cancel and set aside the sale to the petitioner's assignor on the alleged invalidity thereof, it may, in this suit by the petitioner for the patent, set up the same as a defense thereto and have the question lawfully decided.

The demurrer to the petition is overruled.

Mr. W. Scott Beebe and Mr. James K. Kelly for the plaintiff.

Mr. Lewis L. McArthur for the defendant.

(Signed.) MATTHEW P. DEADY,
U. S. District Judge.

(Endorsed:) Filed July 16, 1888. R. H. Lamson, clerk. By R. B. Lamson, deputy.

19 And afterwards, to wit, on the 20th day of August, 1888, there was duly filed in said court an amended petition in words and figures as follows, to wit:

20 In the circuit court of the United States for the district of Oregon.

CARRIE JONES, PETITIONER AND COMPLAINANT,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT. } Petition in equity.

To the judges of the circuit court of the United States for the district of Oregon:

Your petitioner, Carrie Jones, a citizen and resident of the State of Oregon, brings this, *his* petition against the United States, and shows:

I.

That your petitioner's full name is Carrie Jones, and that resides in Multnomah County, State of Oregon, and within the district of Oregon.

II.

That on and prior to June 21, 1883, the SE. quarter of section 30, in township No. 7, north of range No. 3, west of the Willamette meridian, in Columbia County, Oregon, was surveyed public land of the United States and subject to entry and purchase under and by virtue of the act of Congress of June 3d, 1878, and was unfit for cultivation, and was chiefly valuable for the timber thereon.

III.

That on the 21 day of June, 1883, John R. Frierson, having theretofore complied in every respect with all the requirements of said act, and of all the regulations relating to the acquisition of land under said act, so as to entitle him to purchase and pay for the same, and claim and receive a patent from the United States therefor, did, on June 21, 1883, at the United States land office in Oregon City, Oregon, purchase said land
21 from the United States, and did then and there pay to the receiver of said land office all the fees required therefor and the sum of $400, that being the purchase price of said land, at the price of $2.50 per acre, and the price for which the United States agreed to and did sell said land to

IV.

That at the time of said purchase and the payment of said sum to said receiver, he, the said receiver, made, executed, and delivered to said Frierson cate and receipt therefor.

V.

That on the 26 day of June, 1883, said John R. Frierson, for a valuable consideration, sold, assigned, and transferred said certificate and receipt,

and all his rights, title, and interest therein and to said property, to your petitioner, and that, in consideration of said sale, said John R. Frierson, on the 27 day of July, 1883, made, executed, and delivered to your petitioner a good and sufficient deed, said deed granting and conveying said land, and said claim thereto, and interest therein, to your petitioner.

VI.

That said property exceeds in value the sum of $5,000, and does not exceed in value the sum of $10,000.

VII.

That six years have not elapsed since said purchase of said land from the United States, and since the right to a patent for said land accrued.

VIII.

That ever since the payment of said money for said land, and the purchase thereof, the United States has retained and still retains the same.

IX.

22 That the claim for a patent for said land has never heretofore been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

X.

That no patent was ever issued for said land granting to conveying the same from the United States. And this defendant and its servants, whose duty it is to execute said patent, although often requested so to do, neglect and refuse to do so, and assert that as assignee and grantee of said John R. Frierson, your petitioner has no interest in said property or right to have said patent executed or delivered.

XI.

Your petitioner therefore, to the end that her rights as purchaser of said property may be protected and the full and perfect legal title to said land may be vested in her, prays of this honorable court:

1st.

A decree of this court that your petitioner is the owner of said land by virtue of said sale, assignments, and conveyance from said John R. Frierson to your petitioner.

2d.

That the United States issue and deliver or cause to be issued and delivered, in accordance with law, a patent granting and conveying said described property to said Frierson.

3d.

That the title conveyed by said patent to said John R. Frierson and all his rights and interests thereunder enure to the benefit of your petitioner by virtue of and pursuant to said sale, assignment, and conveyance from said John R. Frierson to your petitioner.

May it please your honors to grant unto your petitioner the neces-
23 sary writ, obligation, or requirement, issuing out of and under the seal of this honorable court, to be directed to the defendant, the United States of America, and to be served upon the Attorney-General of the United States and upon the United States district attorney for the district of Oregon, commanding them and each of them, on a certain day and under a certain penalty, that the said United States do appear and answer to the premises, and stand to and abide by and perform such order and decree therein as to this court shall seem proper and shall be agreeable to equity and good conscience. And your petitioner will ever pray.

W. SCOTT BEEBE,
JAMES J. JELLY,
Attorneys and Solicitors for Petitioners.

STATE OF OREGON,
County of Multnomah, ss:

I, Carrie Jones, being first duly sworn on my oath, say that I am the petitioner above named, and that I have heard read the foregoing petition by me subscribed, and that the same and the matters therein stated are true.

CARRIE JONES.

Subscribed and sworn to before me this the 17 day of Aug., 1888.
[SEAL.] W. SCOTT BEEBE,
Notary Public for Oregon.

(Endorsed:) Filed Aug. 20, 1888. R. H. Lamson, clerk.

24 And afterwards, to wit, on the 24th day of August, 1888, there was duly filed in said court a demurrer to amended petition in words and figures as follows to wit:

25 In the circuit court of the United States for the district of Oregon

CARRIE JONES,
vs.
THE UNITED STATES. } No. 1449. Demurrer.

Demurrer of the United States, defendant, to the amended petition of Carrie Jones, the above named petitioner.

This defendant by protestation not confessing all or any of the matters and things in petitioner's amended petition contained to be true in such manner and form as the same is therein set forth and alleged doth demur to said amended petition, and for cause of demurrer showeth:

That said amended petition doth not show any facts which entitle the

petitioner to maintain said amended petition or have the same considered by the court.

That the matters and things in said amended petition set forth do not show that the plaintiff has any claim in law, equity, or admiralty against the defendant.

26 That the amended petition doth not show that this court hath jurisdiction of the matters and things therein set forth.

Wherefore and for divers other good causes of demurrer appearing in said petition the defendant doth demur thereto and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said petition, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

LEWIS L. MCARTHUR,
U. S. Attorney.

DISTRICT OF OREGON, *ss.*

I, Lewis L. McArthur, U. S. attorney, do hereby certify that in my judgment the foregoing demurrer is well grounded in law.

LEWIS L. MCARTHUR.

Due personal service of the within demurrer is hereby admitted at Portland, Or., Aug. 24, 1888.

W. SCOTT BEEBE,
Of Attys. for Petitioner.

(Endorsed:) Filed Aug. 24, 1888; R. H. Lamson, clerk.

27 And afterwards, to wit, on Wednesday, the 29th day of August, 1888, the same being the 72d judicial day of the regular April term of said court—Present: The honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in said case, to wit:

28 In the circuit court of the United States for the District of Oregon.

CARRIE JONES,
vs.
THE UNITED STATES. } No. 1449.

AUGUST 29, 1888.

Now at this day this cause is submitted to the court upon the demurrer to the amended petition, the plaintiff appearing by Mr. W. Scott Beebe, of counsel, and the defendant by Mr. Lewis L. McArthur, United States attorney. On consideration whereof it is ordered that said demurrer be and the same is hereby overruled. Whereupon said plaintiff moves the court for a decree herein, upon the pleadings, and said defendant declining to further plead, but electing to stand upon its demurrer to said amended petition. It is, therefore, adjudged and decreed that the plaintiff is the lawful purchaser of the lands described in the said amended petition as the southeast quarter of section thirty, in township seven north, of range

three, west of the Wallamet meridian, in Columbia County, Oregon, by virtue of a certain sale, assignment, and conveyance from one John R. Frierson to said plaintiff; and it is further adjudged and decreed that the defendant, the United States, do issue and deliver, or cause to be issued and delivered in accordance with law, a patent granting and conveying said lands to said John R. Frierson; and it is further adjudged and decreed that the title conveyed by said patent to said John R. Frierson, and all his rights and interests thereunder, do enure to the benefit of the plaintiff by virtue of and pursuant to said sale, assignment, and conveyance from said John R. Frierson to said plaintiff; and it is further adjudged and decreed that said plaintiff do have and recover off and from the defendant her costs and disbursements herein taxed at.

(Signed)

DEADY, *J.*

(Endorsed:) Filed Aug. 29, 1888. R. H. Lamson, clerk; by R. B. Lamson, deputy.

29 In the circuit court of the United States for the district of Oregon.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Carrie Jones is the plaintiff and the United States is the defendant as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, Oregon, this September 3, 1888.

[SEAL.] R. H. LAMSON,
Clerk,
By R. B. LAMSON,
Deputy.

(Indorsement on cover.) No. 1103. The United States, appellant, *vs.* Carrie Jones. Oregon C. C. U. S. Filed September 15, 1888.